



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 19-00595
)
 Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on a car loan, a furniture debt, and several smaller debts after his divorce. He provided no evidence of any payments toward delinquent balances totaling more than \$26,000. Clearance is denied.

Statement of the Case

On March 15, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On April 15, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record without a hearing by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 26, 2019, the Government submitted a File of Relevant Material (FORM), consisting of five exhibits (Items 1-5). DOHA forwarded a copy of the FORM to Applicant on April 29, 2019, and instructed him to respond within 30 days of receipt. Applicant received the FORM on May 2, 2019. No response to the FORM was received by the June 1, 2019 deadline. On July 9, 2019, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on July 15, 2019.

Findings of Fact

The SOR alleges under Guideline F that, as of the March 15, 2019 SOR, Applicant owed a charged-off loan of \$18,071 (SOR ¶ 1.a); two charged-off credit-card debts of \$823 (SOR ¶ 1.e) and \$517 (SOR ¶ 1.g); a charged-off credit union debt of \$598 (SOR ¶ 1.f); past-due medical debts of \$1,275 (SOR ¶ 1.d) and \$56 (SOR ¶ 1.j); and six collection debts totaling \$5,127 (SOR ¶¶ 1.b-1.c, 1.h-1.i, and 1.k-1.l). (Item 1.) When Applicant responded to the SOR allegations, he admitted the debts, which he attributed to his separation and divorce. He had to move and without his ex-wife's assistance, he could not make his payments. He added that he was "slowly working on getting everything back in order." (Item 2.) After considering the FORM, which includes Applicant's Answer to the SOR, I make the following findings of fact.

Applicant is a 35-year-old defense-contractor employee seeking a DOD security clearance. He has been working for his current employer as a designer since February 2017. Applicant was divorced in August 2012 after almost eight years of marriage. He has no children. He reports that he was homeless or lived with family members between July 2007 and June 2008, and that he lived with his parents from October 2010 to February 2013, so he and his ex-wife may have been separated well before their divorce, although it is unclear. (Item 3.)

Applicant worked as an automobile technician at a quick oil and lubrication facility from January 2007 to January 2008. While employed as a salesman at a car dealership from January 2008 to March 2009, he began studies toward a career change. Applicant earned an associate's degree in June 2014 from a technical institute, which he attended from 2008 to 2010 and 2013 to 2014. (Item 3.) He obtained student loans of more than \$26,000 between January 2009 and November 2010 and more than \$16,000 between July 2013 and February 2014. (Item 5.)

Applicant worked while he was in school and during a break from his studies. He lost his job at the car dealership when the business closed, and then worked in operations support for a plastics company from March 2009 until November 2011, when he was laid off. He spent the next two years as a forklift operator. In November 2013, Applicant secured a job in his career field of graphic design, and he worked full time as an engineering technician, staying on after he earned his degree until February 2017, when he

relocated for his defense-contractor job. Apparently, his current employer gave him a job offer that he could not pass up. (Item 3.) The evidentiary record provided for my review contains no income information for Applicant in his previous or present employments.

Applicant defaulted on some consumer credit debts after his divorce. A joint car loan obtained for \$18,789 in May 2014, after his divorce, was charged off for \$18,539 in September 2015 (SOR ¶ 1.a). A \$2,548 balance owed to another creditor was placed for collection in December 2016 due to inactivity since August 2015 (SOR ¶ 1.b). A \$1,752 wireless-phone debt from March 2014 was referred for collection in March 2017 (SOR ¶ 1.c). In November 2014, a credit union charged off a \$598 deposit-related debt (SOR ¶ 1.f). A credit-card account opened in August 2014 with a \$300 credit limit was charged off for \$517 in November 2016 (SOR ¶ 1.g). He obtained a second credit card with the same lender in February 2016 with a \$700 credit limit. In August 2016, that account was charged off for \$823 (SOR ¶ 1.e). Three medical debts from 2015, of \$1,265 (SOR ¶ 1.d), \$56 (SOR ¶ 1.j) and \$62 (SOR ¶ 1.i), were referred for collection. Applicant made timely payments of \$469 per month on a car loan of \$21,499 obtained in November 2014 with the exception of December 2016, when he fell behind 30 days. In April 2016, he took on a second car loan, of \$30,135, to be repaid at \$475 per month. He made those car payments on time. (Item 5.) He provided no information about why he needed another vehicle.

When Applicant relocated for his job in 2017, he owed \$94 on his power bill for his previous residence. The debt was placed for collection in June 2017 (SOR ¶ 1.i). In his new locale, he bought home furnishings on credit for \$1,267. He made his \$84 monthly payments on time, but his old delinquencies went unpaid, and a \$318 medical debt went to collections in April 2017 (SOR ¶ 1.k). (Item 5.)

On December 8, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He responded affirmatively to the following financial inquiry: "In the past seven (7) years, you had bills or debts turned over to a collection agency." He disclosed a \$1,700 wireless-telephone debt in collection (SOR ¶ 1.c), stating, "Was on a joint account and people didn't pay [their] bill," and a \$353 cable bill (SOR ¶ 1.d), stating, "When I moved service was canceled but I still received [another] bill I was aware of." He also responded affirmatively to an inquiry concerning whether he had any account or credit card suspended, charged off, or cancelled for failure to make payments in the last seven years, and listed a credit card in collection (SOR ¶ 1.g) for approximately \$2,500. He indicated that he was saving up money to pay the debts. (Item 3.)

As of February 3, 2018, Applicant had made no progress toward resolving his delinquent debts. His student-loan debt had reportedly accrued to \$58,641. His student loans were rated as current, although it is unclear whether one or all of his loans were being repaid or were in deferment. (Item 5.)

As of February 2019, Applicant's credit report showed that he was making payments on three car loans: his April 2016 car loan (balance \$19,758), which had been late 30 days in November 2018; his November 2014 vehicle loan (balance \$10,101), which had been

current since January 2017; and a new loan obtained in January 2019 for \$24,948, to be repaid at \$651 per month. His furniture account opened in April 2017 was \$159 past due on a balance of \$1,171. He had made no progress toward resolving those of his old delinquencies that were still on his credit record (SOR ¶¶ 1.a-1.j). The collection debts in SOR ¶¶ 1.k and 1.l were no longer on his credit record, but no payments for those debts are in evidence. Applicant had refinanced some of his student loans through a consolidated loan of \$36,941 in January 2018. He was making timely payments on six credit cards, which had been opened since December 2017. The six accounts had a combined balance of \$3,182. (Item 4.)

There is no evidence of any efforts on Applicant's part to address the delinquent debts alleged in the SOR. He attributes his financial problems to his divorce (Item 2), but the debts at issue became delinquent when he was gainfully employed, years after his divorce. He has taken on new debts as his past-due debts remain unresolved.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

Available credit reports and Applicant’s admissions establish the delinquencies in the SOR. As of March 15, 2019, he owed approximately \$26,467 in charged-off or collection balances. Disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant has the burden of establishing mitigation. One or more of the following conditions under AG ¶ 20 may apply in whole or in part:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. The cell phone debt in SOR ¶ 1.c and the credit union deposit-related debt in SOR ¶ 1.f became delinquent in 2014. The car loan in SOR ¶ 1.a, the collection debt in SOR ¶ 1.b, and the medical debts in SOR ¶¶ 1.d, 1.j and 1.l are from 2015. None of these debts were incurred recently, but they were not resolved as of the March 2019 SOR. The debts are considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Applicant attributes his financial problems to his divorce and being unable to pay some of his financial obligations on his income alone. Marital separation and divorce are circumstances that could trigger AG ¶ 20(b). Yet Applicant did not establish a connection between his divorce, which was final in 2012, and his debts, which became seriously delinquent in 2014 or later. The debts in the SOR were charged off or placed for collection when Applicant was employed full time as an engineering technician. He rented an apartment at that time, but with no details about his income or monthly expenses, it is difficult to conclude that he exercised sound financial judgment under the circumstances that existed at the time.

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside of his control, I have to consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained

contact with his creditors. Applicant listed the credit-card collection debt in SOR ¶ 1.g, the wireless-phone debt in SOR ¶ 1.c, and the cable-services debt in SOR ¶ 1.h on his December 2017 e-QIP, so he has known about those debts for some time. The delinquencies are still outstanding with no evidence of any efforts on his part to resolve them. He indicated in response to the SOR that he was “slowly working on getting everything back in order.” Two medical debts and a power bill in collection are under \$100, and there is no evidence that he has acted responsibly to address even these debts.

Regarding AG ¶¶ 20(c) and 20(d), the Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). The Appeal Board recently reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that “an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” Applicant has demonstrated that he can handle some financial accounts responsibly, as shown by his timely payments on several credit-card accounts and car loans. However, neither AG ¶ 20(c) nor AG ¶ 20(d) can reasonably apply without some progress toward resolving his old delinquencies. He has continued to take on new credit-card debts and auto loans while ignoring his past-due debts. His February 2019 credit report lists three open vehicle loans with outstanding balances totaling \$55,098. His monthly payment obligation on those loans exceeds \$1,500. Applicant has not disputed the accuracy of the information listed on his credit report. He offered no explanation that could possibly justify taking on a new car loan of \$25,239 in January 2019 when he already had car payments totaling \$944 a month and when his delinquencies exceeding \$26,000 remain ignored. Too many unanswered questions exist about his present financial situation. The financial considerations security concerns are not sufficiently mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Some of the adjudicative process factors were addressed under Guideline F, but some warrant additional comment. Applicant went through some difficult circumstances with his divorce, a period of homelessness, and likely low income before finding a job in his chosen career field. He is credited with obtaining his associate’s degree to improve his job

prospects. His current employer apparently offered him a job too good to refuse, and he may have had some moving expenses associated with his relocation in February or March 2017 for his job. He indicates that it has taken him a couple of years to regain his financial footing. Even so, the record evidence shows some recent financial irresponsibility on his part. He has taken on new credit debt while continuing to ignore longstanding, delinquent financial obligations. Security clearance decisions are not intended as punishment for past specific conduct. The security clearance assessment is a reasonable and careful evaluation of an applicant's circumstances and whether they cast doubt upon his judgment, self-control, and other characteristics essential to protecting national security information. Applicant presented little information to overcome the security concerns. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a-1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge